

ANDREW H. WILSON, ESQ., SBN 063209
SHAUNA T. RAJKOWSKI, ESQ., SBN 148239
WILSON, RYAN & CAMPILONGO
115 Sansome Street, Suite 400
San Francisco, California 94104
(415) 391-3900 / (415) 954-0938

LAURIE J. BARTILSON, ESQ, SBN 139220
MOXON & BARTILSON
6255 Sunset Boulevard, Suite 2000
Hollywood, California 90028
(213) 960-1936 / (213) 953-3351

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)
)
GERALD ARMSTRONG,)
)
Debtor.)
)
)
)
)
)

Case No. 95 10911 aj
Chapter 7
Adv. Pro. No. 95 1164

Trial Date: February 13, 1996

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California non-profit
religious corporation,

Plaintiff,

v.

GERALD ARMSTRONG,

Defendant.

PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S
MOTION IN LIMINE TO EXCLUDE EVIDENCE PERTAINING
TO ISSUES ALREADY DECIDED IN STATE COURT PROCEEDINGS

1 Plaintiff and creditor, Church of Scientology International (the "Church"), hereby
2 moves this Court in limine to exclude from the trial of this action evidence proffered by
3 Armstrong concerning issues which have already been finally adjudicated in the state court
4 proceedings between the parties, Church of Scientology International v. Armstrong, Marin
5 County Superior Court, Case No. 157680 (the "State Action").
6

7 I.

8 INTRODUCTION

9 It is plain from the declarations and proposed exhibits that defendant and debtor Gerald
10 Armstrong ("Armstrong") has advanced that he intends this trial to be a re-trial of issues
11 already decided by the state court. On these matters, however, the state court's final
12 decisions, comprised of 4 orders of summary adjudication, and a Court of Appeal decision
13 affirming a preliminary injunction, are binding upon this Court. Armstrong is not entitled to
14 destroy this Court's time by insisting upon a re-trial of issues that he has already lost.
15

16 II.

17 STATEMENT OF FACTS

18 A. THE STATE COURT PROCEEDINGS.

19 In the State Action, the court issued the following binding orders of summary
20 adjudication:
21

22 1. Order of January 27, 1995, granting summary adjudication of the Church's
23 fourth and sixth causes of action [Ex. 8A];¹

24 2. Order of October 17, 1995, granting summary adjudication of the thirteenth,
25

26
27
28 ¹ All references to exhibits are to plaintiff's proposed trial exhibits, separately proffered to this Court.

1 sixteenth, seventeenth and nineteenth causes of action [Ex. 8B];

2 3. Order of October 17, 1995, granting the Church a permanent injunction [Ex.
3 8C];² and

4 4. Order of August 16, 1994, granting the Church summary adjudication of the
5 second and third causes of action of Armstrong's cross-complaint [Ex. 7].
6

7 On May 16, 1994, the California Court of Appeal, Second Appellate District, issued an
8 opinion affirming the Superior Court's May, 1992 Order of Preliminary Injunction [Ex. 6,
9 Appellate Opinion; Ex. 5, Preliminary Injunction].

10 On January 30, 1996, the Superior Court entered final judgment in the State Action,
11 severing the stayed fraudulent conveyance claims, rendering final the summary adjudication
12 orders described above, and declaring the Church to be the prevailing party [Ex. 8].
13

14 As can be seen from Armstrong's Answer to the Second Amended Complaint in the
15 State Action [Ex. 4], Armstrong raised forty-three affirmative defenses to the Church's claims
16 in that action, all of which were decided against him in the summary adjudication motions,
17 and before the Court of Appeal. Among the issues actually decided by the State Court are the
18 following:

19 1. Armstrong and the Church freely and voluntarily entered into a Mutual Release
20 of All Claims and Settlement Agreement ("Agreement") in December, 1986 [Ex. 8C, p. 2];

21 2. The Agreement terms are clear and unambiguous [Ex. 7, p. 1];

22 3. The Church performed all of its obligations pursuant to the Agreement [Ex. 8C,
23 p. 2];
24

25 4. Armstrong received substantial consideration for the promises which he made in
26

27 ² Armstrong moved for reconsideration of this order. His motion was denied on January 17,
28 1996 [Ex. 9].

1 the Agreement [Ex. 8C, p. 2];

2 6. The liquidated damages provision of the Agreement is valid and enforceable
3 [Ex. 8A, p. 1; Ex. 8B, pp. 2-3];

4 7. There was no duress involved in Armstrong's execution of the Agreement [Ex.
5 8A, p. 2; Ex. 8B, p. 3];

6 8. The Agreement is not illegal [Ex. 8A, p. 2];

7 9. The Agreement does not call for the obstruction of justice or the suppression of
8 evidence [Ex. 8A, p. 2];

9 10. Armstrong repeatedly breached the Agreement [Ex. 8A, pp. 2-3; Ex. 8B, p. 2;
10 Ex. 8C, pp. 2-6];

11 11. There was no fraud by the Church in the execution of the Agreement [Ex. 8B,
12 pp. 3-4];

13 12. The Agreement did not prohibit the Church from disclosing information about
14 Armstrong [Ex. 7, p. 1; Ex. 8B, pp. 3-4; Ex. 9, p. 2];

15 13. The Church did not breach any express or implied covenant, and was entitled to
16 specific performance of the Agreement [Ex. 8B, p. 4];

17 14. Enforcement of the Agreement does not violate Armstrong's First Amendment
18 rights [Ex. 8B, p. 4; Ex. 4, p. 9; Ex. 9, p. 2];

19 15. Armstrong reiterated numerous times that he intends to keep breaching the
20 Agreement unless he is ordered by the Court to cease and desist [Ex. 8C, p. 6];

21 16. The Church's legal remedies were inadequate to afford the Church relief from
22 Armstrong's repeated and continuing breaches of the Agreement, and an injunction was
23 necessary to prevent a multiplicity of actions, pursuant to California Civil Code § 3422(1),(3)
24 [Ex. 8C, p. 6];
25
26
27
28

1 17. The Agreement was not invalid as an illegal restraint of trade [Ex. 9, p. 3]; and

2 18. The Church did not have unclean hands which would prevent enforcement of the
3 Agreement [Ex. 9, pp. 3-4] (collectively, the "Decided Issues").

4 **B. ARMSTRONG'S PROPOSED EVIDENCE.**

5 As his proposed evidence, Armstrong has offered one new declaration, and five
6 declarations which were already advanced in opposition to summary adjudication motions in
7 the state court. The state court declarations, and their voluminous exhibits, were already
8 considered by the state court in making its determinations above.³ In much of his Declaration
9 of February 6, 1996, Armstrong simply asks this Court to re-consider the rulings made in the
10 State Action, listed above.⁴ In addition, Armstrong proposed 87 unnumbered exhibits. A
11 review of these exhibits demonstrates that, like the declarations, all but a handful of them were
12 filed by Armstrong in the State Action as part of his oppositions to the Church's summary
13 adjudication motions. Thus, they, too, have already been considered by the state court, and
14
15
16
17
18

19 ³ The declarations were considered by the state court as follows: Trial Declaration #2 -
20 Opposition to Motion for Summary Adjudication of the 2nd and 3rd Causes of Action of the
21 Amended Cross-Complaint, LASC #BC 052395; Trial Declaration #3 - Same as above; Trial
22 Declaration #4 - Opposition to the Church's Motion for Summary Judgment as to Gerald
23 Armstrong's 2nd Amended Cross-Complaint, Marin County Superior Court, Case No. 157680;
24 Trial Declaration #5 - Opposition to Motions for Summary Adjudication of 20th Cause of Action;
and 13th, 16th, 17th and 19th Causes of Action, Marin County Superior Court, Case No. 157680;
and Trial Declaration #6 - Opposition to Motion for Summary Adjudication of 13th, 16th, 17th
and 19th Causes of Action, Marin County Superior Court, Case No. 157680.

25 ⁴ See, e.g., ¶ 3 (Arguing that he did not breach the Agreement, that the Agreement's
26 nondisclosure provisions were reciprocal); ¶ 20 (Arguing fraud and duress in the signing of the
27 Agreement); ¶¶ 5-19, 21-22, 24-26 (Arguing unclean hands); ¶ 3, 28 (Arguing that the Superior
28 Court's decision was "wrong;" "unconscionable and unamerican (sic)"); ¶ 28 (Arguing that the
Agreement and the injunction are illegal and an obstruction of justice); ¶ 29 (Arguing that the
Church did not perform its portion of the Agreement); ¶¶ 30-34, 48 (Arguing that the Agreement
violates his First Amendment rights).

1 need not be considered again here.⁵

2 III.

3 ALL EVIDENCE PERTAINING TO ISSUES ALREADY DECIDED
4 IN THE STATE ACTION SHOULD BE EXCLUDED PURSUANT TO THE
5 DOCTRINE OF COLLATERAL ESTOPPEL.

6 The doctrine of collateral estoppel applies in dischargeability proceedings. Grogan v.
7 Garner, 498 U.S. 279, 284 & n. 11, 111 S.Ct. 654, 658 & n. 11, 112 L.Ed.2d 755 (1991); In
8 re Bugna, 33 F.2d 1054, 1056 (9th Cir. 1994). In determining the collateral estoppel effect of
9 a state court judgment, the federal courts must apply that state's law of collateral estoppel. 28
10 U.S.C. § 1738; Kremer v. Chemical Construction Corp., 456 U.S. 461, 481-82, 102 S.Ct.
11 1883, 1897-98, 72 L.Ed.2d 262 (1982). California law holds that collateral estoppel bars
12 relitigation when,
13

14 (1) the issue decided in the prior action is identical to the issue presented
15 in the second action; (2) there was a final judgment on the merits; and (3) the
16 party against whom estoppel is asserted was a party. . . to the prior
adjudication.

17 Garrett v. City and County of San Francisco, 818 F.2d 1515, 1520 (9th Cir. 1987).

18 Moreover, once the criteria for collateral estoppel have been met, it is error for the
19 bankruptcy court to permit a debtor to relitigate issues. In re Bugna, supra. In Bugna, the
20 creditor obtained a California state court judgment against the debtor, after jury trial, for fraud
21 and breach of fiduciary duty. When the debtor then filed for bankruptcy, the creditor brought
22

23 ⁵ Only a handful of Armstrong's proffered exhibits actually relate to issues which are set to
24 be decided by the Court. The set given to the Church was not numbered, but the few exhibits
25 which arguably do not relate to issues previously decided, and which are relevant to this action,
26 include: 4 Promissory Notes to Michael and Kim Douglas; 5 letters of forgiveness from
27 Armstrong to various individuals; 1 thank you letter from the Douglasses; 1 letter from god
28 guiding Armstrong to give his assets to the poor; 1 Article in the Marin Independent Journal,
November 11, 1992 "Is money the root of problems"; and 1 letter to the Republican National
Committee from Gerald Armstrong re Pledge from the Organization of United Renunciants to do
any with money.

1 an adversary proceeding pursuant to Bankruptcy Code section 523(a)(4). The bankruptcy
2 court found that collateral estoppel precluded the debtor from relitigating the issues of fraud
3 and breach of fiduciary duty, and the debtor appealed. Applying California law of collateral
4 estoppel, the Ninth Circuit soundly rejected the debtor's relitigation attempts, holding:

5
6 Bugna claims the bankruptcy court erred in refusing to reopen the issues
7 of fraud and breach of fiduciary duty. To the contrary, the court would have
8 erred had it permitted relitigation of these issues. Bugna has had his day in
9 court; in fact, he has had many days in court, at great expense to [the creditor]
10 and at great burden to the judicial system. Incurring these costs a second time
11 is precisely the evil the doctrine of collateral estoppel is designed to prevent. . .
12 . Once a party (like [the creditor] here) has won a final victory on an issue, it is
13 entitled to avoid relitigation of that issue in any other forum. The bankruptcy
14 court's otherwise broad powers do not include the power to reject a party's
15 invocation of collateral estoppel on an issue fully and fairly litigated in another
16 court.

17 33 F.2d at 1057-1058.

18
19 As demonstrated below, the evidence offered by Armstrong in an attempt to relitigate
20 the issues decided by the state court must be excluded, because the judgment entered in the
21 State Action meets each of the criteria necessary to invoke collateral estoppel.

22 **A. The Issues And Parties Are Identical**

23
24 An issue is a single, certain and material point arising out of the
25 allegations and contentions of the parties. . . . It may concern only the existence
26 or non-existence of certain facts, or it may concern the legal significance of
27 those facts. . . . If the issues are "merely evidentiary," they need only deal with
28 the same past events to be considered identical.

29 Overseas Motors, Inc. v. Import Motors Ltd., 375 F.Supp. 499, 518 n.66a (E.D.Mich. D.C.
30 1974).

31
32 In the State Action, the Church was the plaintiff, and Armstrong the defendant, making
33 the parties identical to the parties here [Exs. 2, 3, 8]. In Part II A, supra, the Church has
34 identified 18 issues which were decided by the superior court. Specific findings of fact as to
35 each of these issues were made by the superior court in one or more orders granting summary

1 adjudication; the summary adjudication orders were then incorporated into the final judgment -
2 the Decided Issues.

3 Armstrong has included voluminous declarations and exhibits as part of his proposed
4 trial presentation which pertain to the Decided Issues. Indeed, most of the evidence which he
5 proposes to offer to this Court is precisely the same evidence which he already placed before
6 the state court. In his latest declaration, Armstrong admits that the court in the State Action
7 considered all of this evidence and ruled against him; he just wants this Court to reexamine it
8 all, and decide it differently. All of the statements, declarations and exhibits which were
9 already considered by the state court, and which were already ruled upon when that court
10 issued its summary adjudication rulings and final order, should therefore be excluded.

11
12
13 **B. There Is A Final Judgment on the Merits**

14 The state court entered a final judgment on the merits based on its earlier summary
15 adjudication orders [Exhibit 8]. In the State Action, Armstrong received a full and fair
16 opportunity to litigate the Decided Issues. Each of the summary adjudication motions was
17 hotly contested by Armstrong, who submitted oppositions to each motion with accompanying
18 separate statements and voluminous declarations and exhibits. See, e.g., Armstrong's
19 proposed trial declarations 2-6, which were given to the Church without their exhibits, but
20 which list the exhibits in detail. Each of these was previously filed as support for Armstrong's
21 opposition to one of the summary adjudication motions.⁶

22
23 Moreover, each of the summary adjudication orders describes the superior court's
24

25 ⁶ The Church can present to the Court, if it is desired, full sets of the exhibits and separate
26 statements proffered by Armstrong in the State Action to oppose the summary adjudication
27 motions. They are so voluminous, however, that they fill several bankers' boxes. Suffice it to
28 say that there is not a single issue or fact asserted by Armstrong in relation to the underlying
settlement agreement, his claims of "unclean hands," his claimed history in and with Scientology,
or his religious beliefs which he did not already present to the state court.

1 determination of the issues based on a thorough and careful review of the evidence and
2 argument presented by both sides [Exs. 4-9] The final judgment was not rendered based on
3 any technical deficiency nor by virtue of any abandonment of claims by Armstrong. Instead,
4 the Decided Issues were established through the court's determination of the lack of substantial
5 controversy as to the operative facts pertaining to the issues addressed by the Church's several
6 motions for summary adjudication.
7

8 Moreover, there can be no question that the final judgment is sufficiently final to give
9 rise to the application of collateral estoppel as to the Decided Issues. In Lummus Co. v.
10 Commonwealth Oil Refining Co., 297 F.2d 80 (2d Cir. 1961), the Court of Appeals described
11 the necessary finality of a judgment to be as follows:
12

13 Whether a judgment, not "final" in the sense of 28 U.S.C. §1291, ought
14 nevertheless be considered "final" in the sense of precluding further litigation of
15 the same issue, turns upon factors such as the nature of the decision (i.e., that it
16 was not avowedly tentative), the adequacy of the hearing, and the opportunity
17 for review. "Finality" in the context [presented there] may mean little more
18 than that the litigation of a particular issue has reached such a stage that the
19 court sees no really good reason for permitting it to be relitigated again.

20 Id. at 89.

21 Here, the superior court ordered the clerk to enter a final judgment in favor of the
22 Church in accordance with the summary adjudication orders [Ex. 8]. This is not tentative.
23 Moreover, Armstrong brought a motion for reconsideration of one of the October orders,
24 which was denied, and the time has passed for him to bring any further reconsideration
25 motions to the superior court. Since the clerk has been directed to enter a final judgment, the
26 orders are final and appealable.

27 Thus Armstrong, like Bugna "has had his day in court; in fact, he has had many days
28 in court, at great expense to [the creditor] and at great burden to the judicial system." 33 F.2d
at 1057. He is not entitled to relitigate the Decided Issues.

1 Having "won a final victory" on all of the Decided Issues, the Church "is entitled to avoid
2 relitigation of [those] issue[s] in any other forum." Id.

3
4 IV.

5 CONCLUSION

6 In view of the foregoing, all of evidence relating or pertaining to the Decided Issues,
7 including the evidence identified herein, should be excluded from presentation at trial because
8 it pertains solely to Armstrong's efforts to relitigate issues as to which the doctrine of
9 collateral estoppel applies.

10 Dated: February 13, 1996

Respectfully submitted,

11 WILSON, RYAN AND CAMPILONGO
12

13
14 By:

Andrew H. Wilson
Andrew H. Wilson

15 Laurie J. Bartilson
16 MOXON & BARTILSON

17 Attorneys for Plaintiff
18 CHURCH OF SCIENTOLOGY
19 INTERNATIONAL
20
21
22
23
24
25
26
27
28